

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isabelle James	Team: Squad #9	CCRB Case #: 201610150	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 12/08/2016 3:00 PM	Location of Incident: Utica Avenue and Winthrop Street	Precinct: 71	18 Mo. SOL 6/8/2018	EO SOL 6/8/2018	
Date/Time CV Reported Fri, 12/09/2016 5:20 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 12/09/2016 5:20 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Flagumy Valcourt	06178	954389	067 PCT
2. INS Joseph Gulotta	00000	900369	067 PCT
3. POM Ugur Bek	06681	948648	NARCBBS
4. LSA John Hopkins	00000	904167	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christophe Andrade	17196	960161	067 PCT
2. POM Zeshan Naeem	13915	951603	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.INS Joseph Gulotta	Abuse: Inspector Joseph Gulotta stopped the vehicle in which § 87(2)(b) was an occupant.	
B.LSA John Hopkins	Abuse: Lieutenant John Hopkins stopped the vehicle in which § 87(2)(b) was an occupant.	
C.LSA John Hopkins	Abuse: Lieutenant John Hopkins searched the glove compartment of § 87(2)(b)'s vehicle.	
D.INS Joseph Gulotta	Discourtesy: Inspector Joseph Gulotta spoke discourteously to § 87(2)(b)	
E.INS Joseph Gulotta	Abuse: Inspector Joseph Gulotta threatened to arrest § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On December 9, 2016, § 87(2)(b) filed this complaint with the CCRB via the call processing system.

On December 8, 2016, at approximately 3:00 p.m., § 87(2)(b) was allegedly pulled over by an unmarked police car on the corner of Utica Avenue and Winthrop Street in Brooklyn (**Allegation A** and **Allegation B**). Two plainclothes officers approached his car. The first officer, identified as Lieutenant John Hopkins from the 67th Precinct, approached § 87(2)(b)'s driver's side window and asked for his license and registration. The second officer, identified as Inspector Joseph Gulotta of the 67th Precinct, approached § 87(2)(b)'s passenger side window. While § 87(2)(b) was searching for his license, registration, and insurance, Lieutenant Hopkins instructed § 87(2)(b) to exit his car. Lieutenant Hopkins then led § 87(2)(b) to the back of his car and told him to face away from his car. At one point, while at the back of his car, § 87(2)(b) turned around and allegedly saw an officer, whom he could not identify, searching his car (**Allegation C**).

An additional marked and unmarked police car arrived at the scene. While § 87(2)(b) was standing at the back of his car, he was speaking to a third plainclothes officer, identified as PO Flagumy Valcourt of the 67th Precinct. When answering PO Valcourt's questions, Inspector Gulotta allegedly stated to § 87(2)(b) "Shut the fuck up. If you don't the fuck up, I'm going to have to put you in handcuffs" (**Allegation D** and **Allegation E**). Inspector Gulotta allegedly told § 87(2)(b) to "shut the fuck up" a total of three times during the course of the interaction. § 87(2)(b) alleged that multiple identification cards that were inside his duffle bag on the back seat of his car, and an unopened alcohol bottle that was on the floor, either by the back passenger seats or in the trunk of his car, were removed by an officer.

§ 87(2)(b) was summonsed for § 87(2)(b). He was not placed under arrest as a result of this incident.

There is no video footage of this incident.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation during his phone statement on December 13, 2016 § 87(2)(b)
- As of February 22, 2017, § 87(2)(b) has not filed a Notice of Claim in regards to this incident. (**Board Review 1**).
- § 87(2)(b) has no prior criminal convictions (**Board Review 2**).

Civilian and Officer CCRB Histories

- § 87(2)(b) has one prior CCRB complaint (**Board Review 3**). § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
- Inspector Gulotta has been a member of the NYPD for 25 years and has had 28 prior CCRB allegations pleaded against him involving 13 cases. Inspector Gulotta has one substantiated allegation of Abuse of Authority – Other in case number 201210050 that was substantiated. The CCRB recommended that he receive instructions as a result, which the NYPD ultimately penalized him with. Inspector Gulotta is currently involved in an open CCRB case, case number 201607599, in which three allegations are pleaded against him; Abuse of Authority – Premises entered and/or searched, Abuse of Authority – Refusal to provide name/shield number, and Abuse of Authority – Seizure of Property. Inspector Gulotta has two prior allegations of Discourtesy – Word, case number 200716441 and case number 201204275, which were closed as unsubstantiated and complainant uncooperative. § 87(2)(g)
[REDACTED]
- Lieutenant Hopkins has been a member of the NYPD for 23 years and has 31 prior CCRB allegations pleaded against him involving 18 cases. Lieutenant Hopkins has two prior substantiated allegations; an allegation of Abuse of Authority – Question and/or stop in case number 200700412 that was substantiated with a CCRB recommendation of charges, however no disciplinary action was taken by the NYPD. An allegation of Abuse of Authority – Premises entered and/or searched in case number 201508477 was pleaded against Lieutenant Hopkins and was substantiated. Formalized training was recommended by the CCRB, and the NYPD has yet to reach a final disposition (see officer history).

Findings and Recommendations

Explanation of Subject Officer Identification

- Inspector Gulotta testified in his statement to the CCRB that both he and Lieutenant Hopkins made the decision together to stop § 87(2)(b)'s vehicle. Lieutenant Hopkins testified that both he and Inspector Gulotta observed § 87(2)(b) commit multiple traffic infractions before Lieutenant Hopkins made the decision to signal for § 87(2)(b) to pull over. § 87(2)(g)
[REDACTED]
- § 87(2)(b) alleged that he saw an officer inside of his vehicle when he turned around when standing at the back of his car. He also alleged that officers retrieved his identification and the open bottle of alcohol from inside his car. Lieutenant Hopkins stated that he did searched § 87(2)(b)'s vehicle and that an officer may have retrieved § 87(2)(b)'s driver's license and insurance card from the glove compartment of his car. Lieutenant Hopkins testified that he made the decision to search § 87(2)(b)'s vehicle. Lieutenant Hopkins could not identify the other officer who searched § 87(2)(b)'s car but recalled that he was a member of the anti-crime team. PO Valcourt, who is a black male, and PO Bek, who is a white male, were the two anti-crime officers who responded to the scene. When asked what race the anti-crime officer who searched the back of § 87(2)(b)'s vehicle was,

Lieutenant Hopkins stated that he could not remember the officer's race. Both PO Valcourt and PO Bek either denied searching § 87(2)(b) vehicle or did not recall if they searched § 87(2)(b)'s vehicle. Inspector Gulotta stated that he saw multiple officers inside § 87(2)(b)'s vehicle but did not recall the names or descriptions of the officers he saw searching the vehicle. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation A: Inspector Joseph Gulotta stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B: Lieutenant John Hopkins stopped the vehicle in which § 87(2)(b) was an occupant.

On December 8, 2016, at approximately 3:00 p.m., § 87(2)(b) was allegedly pulled over by an unmarked police car on the corner of Utica Avenue and Winthrop Street in Brooklyn. § 87(2)(b) stated that his car has windows that are tinted past the legal limit; however, he has a medical exemption for those tints from the DMV (**Board Review 4**). § 87(2)(b) stated that there is a DMV sticker on the windshield of his car confirming his exemption. § 87(2)(b) stated that his license plates may have been hanging loose from a screw, but that he did not know that his license plates were hanging until the officers told him that there was an issue with his license plates after he was stopped prior to being stopped. § 87(2)(b) made all of his turn signals after leaving 575 East End Parkway, but admitted that he was driving at approximately 35 mph down Utica Avenue, which the investigation has determined to be a 25 mph zone.

During his statement to the CCRB, Inspector Gulotta testified that he observed § 87(2)(b) swerving in and out of traffic without signaling, that § 87(2)(b)'s car had illegally tinted windows, and that there were no license plates or registration stickers on § 87(2)(b)'s vehicle (**Board Review 5**). Lieutenant Hopkins testified that when he initially saw § 87(2)(b)'s vehicle on Utica Avenue, he immediately observed that the car had illegally tinted windows and no license plates (**Board Review 6**). Lieutenant Hopkins observed § 87(2)(b) move between the middle lane and bus lane on Utica Avenue multiple times without signaling and also determined that the car was driving faster than the city-wide speed limit of 25 mph. After observing § 87(2)(b) commit multiple traffic infractions, Lieutenant Hopkins signaled for § 87(2)(b) to pull over using his lights and siren. § 87(2)(b) was ultimately summonsed for his excessive window tints and for driving without license plates.

New York State Vehicle and Traffic Law 402(a1) states that no person shall operate, drive or park a motor vehicle on the public highways of this state unless such vehicle shall have a distinctive number assigned to it by the commissioner and a set of number plates issued by the commissioner with a number and other identification matter if any, corresponding to that of the certificate of registration conspicuously displayed, one on the front and one on the rear of such vehicle, each securely fastened so as to prevent the same from swinging. (**Board Review 7**). New York State Vehicle and Traffic Law Article 9, Section 12a(1-2) states that no person shall operate any motor vehicle upon any public highway, road or street if the windshield, side wings or side windows of which on either side forward of or adjacent to the operator's seat are composed of,

covered by or treated with any material which has a light transmittance of less than seventy percent (**Board Review 8**).

§ 87(2)(g)

Allegation C: Lieutenant John Hopkins searched the glove compartment of § 87(2)(b)'s vehicle.

It is undisputed that § 87(2)(b)'s vehicle was searched after § 87(2)(b) was taken to the back of his car. § 87(2)(b) alleged that while he was standing at the back of his car, even after being told to face away from his vehicle by Lieutenant Hopkins, he glanced back towards his vehicle and saw an officer, whom he could not identify or describe, inside his vehicle. Lieutenant Hopkins and Inspector Gulotta both testified that § 87(2)(b)'s vehicle was searched in order to obtain some kind of identifying information to confirm that § 87(2)(b) was the owner of his vehicle, as well as to determine whether § 87(2)(b) had been involved in committing a crime, such as a robbery or shooting.

Lieutenant Hopkins asked § 87(2)(b) to provide his license and registration and explained to § 87(2)(b) that he did not have license plates on the front or back of his car. Lieutenant Hopkins then commanded § 87(2)(b) to get out of his car when § 87(2)(b) was not initially able to produce his license and registration. Lieutenant Hopkins did not remember how long waited for § 87(2)(b) to produce documentation before asking for § 87(2)(b) to get out of his car. No further attempt was made to verify whether § 87(2)(b) was the owner of his car before he was removed from the vehicle. No attempt was made to verify whether § 87(2)(b) was the owner of the vehicle once he was standing at the back of the car. No officer asked § 87(2)(b) where he was coming from or where he was going prior to searching § 87(2)(b)'s car. Lieutenant Hopkins stated that the only way to verify that § 87(2)(b) was the owner of the car, without license plates or identification, was to check the vehicle's VIN number.

While § 87(2)(b) was standing at the back of the vehicle with Inspector Gulotta, Lieutenant Hopkins searched the front two seats of § 87(2)(b)'s vehicle and retrieved a license plate that was lying on the floor in front of the passenger's seat. Another officer, whom the investigation was unable to identify, retrieved the additional license plate from the floor in front of one of the back passenger seats. Lieutenant Hopkins did not ask for § 87(2)(b)'s consent before entering into the vehicle. The ownership of § 87(2)(b)'s vehicle was verified after the license plates were retrieved from the floor of the vehicle, but not before § 87(2)(b)'s driver's license and insurance card were retrieved from the glove compartment, which had been closed. Lieutenant Hopkins was unsure who recovered § 87(2)(b)'s license and insurance card from the glove compartment, but stated that they were recovered after the license plates had been retrieved. All of the other officers who

responded to the scene either denied searching § 87(2)(b)'s vehicle or did not recall searching the vehicle.

People v. Derrell, 889 N.Y.S.2d 905, 2009, found that the seizure of a gravity knife from the center console compartment of the Defendant's vehicle was a violation of the Defendant's Fourth Amendment rights because the Defendant had been secured, was standing at the back of his vehicle, and was not within reaching distance of the passenger compartment at the time of the search and that there was no possibility that he could reach into the car and obtain a weapon or destroy evidence (**Board Review 13**). The court states that, in this case, it is clear that the gravity knife discovered during the illegal search of the Defendant's car was primary evidence, that is, the very evidence which was obtained through the illegal search.

People v. McFarlane, 939 N.Y.S.2d 460, 2012, found that even after obtaining consent to search the Defendant's vehicle, the officer's decision to unlock the previously locked glove compartment, where he found a loaded gun, was a violation of the Defendant's Fourth Amendment Rights because the general consent to search the car did not reasonably authorize the officer breaking into a hidden compartment (**Board Review 14**). The courts affirmed that the officers' action of unlocking the glove compartment using a key was not reasonable in the scope of consent to search the vehicle by the Defendant.

People v. Philbert, 707 N.Y.S.2d 14, 2000, found that the search of the Defendant’s glove compartment was proper since the officers had reason to believe that the area would contain “evidence related to the suspected crime”, namely registration and insurance documentation proving the vehicle had been stolen (**Board Review 15**). The totality of the circumstances, including the information disclosed by the computer’s status check on the vehicle, the Defendant’s unexplained failure to produce documentation, and the Defendant’s statement that the car belonged to a named friend, whose name was completely different from that of the registered owner, provided probable cause to believe the vehicle was being driven without the consent of the owner, even though not reported stolen at that time.

§ 87(2)(g) [REDACTED]

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D: Inspector Joseph Gulotta spoke discourteously towards § 87(2)(b)

Allegation E: Inspector Joseph Gulotta threatened to arrest § 87(2)(b)

§ 87(2)(b) alleged that when he was standing at the back of his car with Inspector Gulotta and PO Valcourt, PO Valcourt was asking § 87(2)(b) questions regarding where he had come from and where he worked. While § 87(2)(b) was answering PO Valcourt's questions, Inspector Gulotta told § 87(2)(b) to, "shut the fuck up." He then said to § 87(2)(b) "If you don't shut the fuck the fuck up I'm going to have to put you in handcuffs." § 87(2)(b) then stood quietly at the back of the car. When PO Valcourt asked § 87(2)(b) another question and § 87(2)(b) began to answer him, Inspector Gulotta told § 87(2)(b) to, "shut the fuck up" an additional time. Inspector Gulotta told § 87(2)(b) to "shut the fuck up" a total of three times.

PO Valcourt testified that he did not hear any officer tell § 87(2)(b) to "shut the fuck up" or hear any officer threaten to arrest § 87(2)(b) (**Board Review 9**). Lieutenant Hopkins also testified that he did not hear any officer, including Inspector Gulotta, tell § 87(2)(b) to, "shut the fuck up" or hear any officer threaten to arrest § 87(2)(b). PO Bek, PO Andrade and PO Naeem testified that no officer told § 87(2)(b) to "shut the fuck up" or threatened to arrest § 87(2)(b) while there were on scene (**Board Review 10, Board Review 11, and Board Review 12**).

Inspector Gulotta testified that § 87(2)(b) was speaking rapidly and seemed nervous when Inspector Gulotta asked him questions at the back of the car. He did not recall the questions he asked § 87(2)(b) but because § 87(2)(b) appeared nervous and was speaking rapidly, Inspector Gulotta's concern for the officers' safety was elevated. At the time that Inspector Gulotta was speaking to § 87(2)(b) at the back of his car, the backup units had not yet arrived on scene. Inspector Gulotta was concerned that § 87(2)(b) had been involved in a crime, specifically a shooting or a robbery. He suspected § 87(2)(b) to have potentially been involved in those crimes because, in his experience, vehicles involved in shootings and robberies usually remove their license plates in order to avoid being identified by police. There were no other factors, such as a 911 call, to suggest § 87(2)(b) had been involved in such a crime. Inspector Gulotta testified that he commanded § 87(2)(b) to be quiet multiple times and that § 87(2)(b) did not comply initially, but eventually stopped speaking. Inspector Gulotta described his tone of voice when speaking to § 87(2)(b) as forceful and commanding.

When asked if he ever used profanity towards § 87(2)(b) or told § 87(2)(b) to “shut the fuck up”, Inspector Gulotta testified that he did not recall telling § 87(2)(b) to “shut the fuck up” and that he “did not believe” he directed profanity towards § 87(2)(b). Inspector Gulotta acknowledged telling § 87(2)(b) that he could be arrested because they had no paperwork to verify that he was the owner of the vehicle he was driving. When asked if he specifically stated, “If you don’t shut the fuck up, I’m going to have to put you in handcuffs,” Inspector Gulotta stated that he did not recall making that statement. § 87(2)(g)

§ 87(2)(b)

§ 87(4-b), § 87(2)(g)

§ 87(2)(b)

Squad: 9

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date